

United States Court of Appeals
for the
District of Columbia Circuit



TRANSCRIPT OF
RECORD

RETURN TO WRIT OF CERTIORARI.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906

No. 1696.

440

JOHN McFARLANE, APPELLANT,

vs.

PATRICK KIRBY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED OCTOBER 17, 1906.

Filed Oct. 12, 1906. J. R. Young, Clerk.

THE UNITED STATES OF AMERICA, ss:

[Seal Court of Appeals, District of Columbia.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas in a certain suit in said Supreme Court between Patrick Kirby, Plaintiff, and John McFarlane, defendant, Law No. 47907, which suit was removed to the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to-wit:

1. Declaration or complaint filed by Patrick Kirby against the appellant in the Justice's Court of the District of Columbia, Sub-district No. 5.
2. Plea of title filed by appellant in said cause.
3. Undertaking on plea of title filed by appellant and his surety in said cause.

4. Certificate of the Justice of the Peace on plea of title by defendant.

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Court of Appeals, so that you have the same, together with this writ, before the said Court of Appeals forthwith.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 12th day of October, in the year of our Lord one thousand nine hundred and six.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the
 District of Columbia.*

[Endorsed:] 47907. Court of Appeals of the District of Columbia. No. 1696, October Term, 1906. John McFarlane, Appellant, *vs.* Patrick Kirby. Writ of Certiorari. Filed Oct. 12, 1906. J. R. Young, Clerk.

Declaration or Complaint Filed by Appellant.

Filed August 11, 1905.

In Justice's Court of the District of Columbia.

Sub-District No. 5.

No. 47907.

PATRICK KIRBY, Plaintiff,
vs.
 JOHN McFARLANE, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

The plaintiff, Patrick Kirby, being first duly sworn, according to law, states that he is entitled to the possession of the premises and messuages situate in the City of Washington, District of Columbia, described as follows, to-wit: House and premises known as No. 1212 Sixth Street, South West; that heretofore, to wit, on the eighteenth day of February, 1904, the said defendant entered into an agreement in writing with Samuel R. Bond, whereby the said Bond agreed to let unto him, the said McFarlane, the above-described messuage and premises by the month, commencing on the said 18th day of February 1904, at and for the monthly rent of eighteen dollars and fifty-cents, payable in advance, on the eighteenth day of each and every month during said tenancy, as rent in advance for the next ensuing month; and the said defendant agreed to take said premises, and hold the same as tenant by the month, at the rent

aforesaid, and payable as aforesaid. Said lease provided, among other things, that if the said lessee should fail to pay the said rent, in advance, as aforesaid, although no legal or formal demand for the same had been made, on the day when the same should fall due and become payable, that then and in such an event, said agreement, and all things therein contained should cease and determine, and should operate as a notice to quit, the thirty days notice to quit, being by said proviso expressly waived. Said lease further provided that the said lessor and his heirs and assigns, should and might proceed to recover possession of said premises under the provisions of the Code of Law for the District of Columbia to regulate proceedings in cases between landlords and tenants. Plaintiff further avers that after the execution and delivery of said agreement, or lease, to wit, on the 22nd, day of June, 1905, the said Samuel R. Bond assigned the same, in writing, under his seal, unto plaintiff; that on, to wit, the 18th day of July, 1905, under and by the terms of said lease, there became due and payable unto plaintiff, as assignee, as aforesaid, the sum of \$18.50, as rent in advance for said premises, for the next ensuing month; that due demand was made upon said defendant for the payment of said rent; but the same was not paid, nor any part thereof; wherefore, by reason of the premises aforesaid, the said lease or rent agreement, ceased and determined. Plaintiff avers that said defendant is still in possession of said premises, and *and* unlawfully detains said real estate, and holds the same without right, against complainant, contrary to the form of the statute in such case made and provided; and that defendant's right to possession in and to said land and premises has determined; and by reason of the premises aforesaid plaintiff has a right to have and recover possession of said premises, in accordance with the terms and provisions of the law in such cases made and provided.

Plaintiff therefore prays that a summons be issued, commanding defendant to appear and show cause why judgment should not be given against him for the restitution of the possession of said premises, and costs of this suit.

PATRICK KIRBY.

Subscribed and sworn to before me, this 24th. day of July, A. D. 1905.

[SEAL.]

J. CLARENCE PRICE,
Notary Public, D. C.

Plea of Title by Appellant.

Filed August 11, 1905.

In the Justice Court of the District of Columbia.

Sub-District No. 5.

No. 47907.

PATRICK KIRBY
vs.
 JOHN McFARLANE.

Comes now the defendant in his proper person, and denying that he holds the premises described in these proceedings as in the written complaint of the plaintiff alleged, says that the title to said premises is in himself and his wife Mary McFarlane and he holds and claims said premises by virtue of said title, and none other, and is not derived from any letting of the premises by said plaintiff or from any forcible entry or unlawful detainer which title has been vested in this affiant and Mary McFarlane his wife by deed executed by John Crane dated the 1st day of April 1902 and recorded in Liber —, folio —, one of the Land records of the District, whereby said premises were then and there conveyed to his wife Mary McFarlane, wherefore he has held possession of said premises continuously from said date to the present day.

JOHN McFARLANE.

Subscribed and sworn to before me this 3d day of August, A. D. 1905.

CHARLES W. HANDY,
 [NOTARIAL SEAL.] *Notary Public.*

Undertaking on Plea of Title.

Filed August 11, 1905.

In Justice Court of the District of Columbia.

Filed Sub-District No. 5.

No. 47907.

PATRICK KIRBY
vs.
 JOHN McFARLANE.

The defendant, and The Metropolitan Surety Co. his surety, appearing and submitting to the jurisdiction of this Court and of the

Supreme Court of the District of Columbia, hereby undertake for themselves, and each of them, their and each of their heirs, executors and administrators, successors and assigns, to pay all intervening damages and costs which may be sustained by the plaintiff by reason of the filing of the plea of title in this cause, as well as all reasonable intervening rent for the premises described in these proceedings, and consent that judgment in accordance with this undertaking may be entered against them in said Supreme Court either jointly or severally.

Signed this 7th day of August, A. D. 1905.

JOHN MCFARLANE.
THE METROPOLITAN SURETY
COMPANY, [SEAL.]
By CHAS. N. VANCE,
Resident Vice-Pres'd't.

Attest:

JOHN F. BECKER,
Resident Asst. Sec'y.

Approved August 7th, 1905.

LEWIS I. O'NEAL,
Justice of the Peace.

Certificate of J. P. on Plea of Title by Def't.

Filed August 11, 1905.

In Justice's Court of the District of Columbia.

Sub-District No. 5.

No. 47907.

PATRICK KIRBY, Plaintiff,
vs.
JOHN MCFARLANE, Defendant.

Date.	Proceedings.
-------	--------------

July 24th, 1905.	Summons and copy issued returnable, August 3d. at 2 P. M.
	Returned, summoned.
August 3d.	Defendant filed plea of title.
" 7th.	Bond filed and approved.
" 10th.	All papers certified to the Clerk of the Supreme Court, D. C.

I, Lewis I. O'Neal, Justice of the Peace in and for the said Sub-District, do hereby certify that the foregoing is a true copy of my Docket entries and of all the proceedings had before me in the above cause, and that the annexed documents are all the original papers filed in said cause.

Given under my hand and seal this 10" day of August, A. D. 1905.

LEWIS I. O'NEAL, [SEAL.]
Justice of the Peace.

Costs paid by plaintiff.....	\$1.85
Costs paid by defendant.....	\$1.00

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia do hereby certify in obedience to the Writ of Certiorari hereto attached and returned herewith, that the foregoing are true and correct copies of the

1. Declaration or complaint filed by Patrick Kirby against the appellant in the Justice's Court of the District of Columbia, Sub-District No. 5.
2. Plea of title filed by appellant in said cause.
3. Undertaking on plea of title filed by appellant and his surety in said cause.
4. Certificate of the Justice of the Peace on plea of title by defendant,

containing the words and figures omitted by inadvertence from the record heretofore transmitted to the Court of Appeals of the District of Columbia in cause entitled Patrick Kirby, Plaintiff, *vs.* John McFarlane, Defendant at Law, No. 47,907.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 17" day of October, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 1696. John McFarlane, Appellant *vs.* Patrick Kirby. Return to Writ of Certiorari. Court of Appeals, District of Columbia. Filed Oct. 17, 1906. Henry W. Hodges, Clerk.